IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24414 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MODINAGAR CO-OP HOUSING SOC. LTD & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :

NANAVATI & NANAVATI for Petitioner(s) : 1 - 2.
MS SANGEETA VISHEN, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 1 - 5.
MR RM CHHAYA for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 02/05/2006

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner – society has prayed for an appropriate writ, direction or order quashing and setting aside the Stay Order No.

Jamin/Vashi/1488 of 2005 dated 15th April, 2005, Annexture – I to the petition.

2.The case of the petitioners in the petition is as under :-

That the petitioner No.1 – Modinagar Co-operative Housing Society Limited purchased various pieces or parcels of land bearing Survey Nos. 277/3, 203/1+2, 200/1+2+3, 282/3, 280, 281, 282/1+2, 278/2, 277/1+2, 278/1 and 279 of Village Sola, Taluka Daskroi, District Ahmedabad. One another Society i.e. Balkrishna Co-operative Housing Society Limited, the respondent No.4 herein, purchased the land bearing Survey Nos. 302, 303, 304/1, 313/2, 313/3, 294/2, 298, 299/1+2+3 and others of Village Ghatlodia and one Shahi Property Developers Private Limited, the respondent No.5 herein, purchased the land bearing Survey Nos. 136/1, 137/2, 138/1, 138/2 and 141/1 of Village Ghatlodia, Taluka City, District Ahmedabad. The Ahmedabad Urban Development Authority (hereinafter referred to as “the AUDA”)

prepared a Draft TP Scheme in respect of revenue villages of Ghatlodia-Sola-Chandlodia named as TP Scheme No. 28 (Ghatlodia-Sola-Chandlodia) and submitted the same under Section 48(1) of the Gujarat Town Planning & Urban Development Act; 1976 (hereinafter referred to as “the Act”). That against the aforesaid survey numbers, under the Draft TP Scheme, Final Plot No. 70 was allotted to the petitioners and the respondent Nos.4 and 5 and other persons and in lieu of total lands admeasuring 1,50,910. sq. mts. of land, it is proposed to allot Final Plot No. 70 admeasuring 75,455 sq. mts. of the land and the remaining land has gone under compulsory deduction for the TP Scheme. It appears from the record that Final Plot No. 70 is consisting of various Survey Numbers i.e. Survey Nos. 199 (part), 200, 203, 276, 277/1+2, 278, 277/3, 278/2, 204 (part), 205 (part), 206 (part), 207 (part), etc. i.e. OP Nos. 76, 77 and 78. It is the case of the petitioners that the respondent No.3 – AUDA has formed a practice of exchange of plots of land to the allottees of Final

Plot as per the Draft TP Scheme even before the sanction to the Draft TP Scheme by the State Government under Section 48 of the Act and/or before finalization of the TP Scheme. It is the case of the petitioners that the petitioners and respondent Nos.4 and 5 were put into possession of various Survey Numbers forming part of Final Plot No. 70 but they did not get the possession of the Survey Nos. 199 (part), 202 (part), 206 (part), 205 (part), 204 (part), 275 (part), 276 (part) and 286 (part), which Survey Numbers belonging to Sola Gram Panchayat. It is the case of the petitioners that the petitioner No.1 and respondent Nos.4 and 5 requested the Sarpanch, Sola Gram Panchayat, to give possession of the said lands to them and the said request was considered by the Sola Gram Panchayat and the Sola Gram Panchayat resolved to hand over the possession of the said lands to the petitioner No.1 as well as respondent Nos.4 and 5 and the petitioner No.1 came into possession of Survey Nos. 204 (part), 205 and 206 of Village Sola, held by the Sola Gram Panchayat. It is the

case of the petitioners that the respondent No.5 submitted an application for the development of the land bearing Survey Nos. 282/3, 279, 280, 281, 282/1+2, 304/1, 303, 302, 299, 298, 294/2, 313/3/5, 303/2, 141/5, 137/2, 136/1, 138/1 and 138/2 admeasuring about 75,455 sq. mts. of land divided into various sub-plot Nos.1 to 45. It is the case on behalf of the petitioners that as the land bearing Survey Nos. 204 (part), 205 (part), 206 (part), 275 (part), 276 (part), 285 (part), 286, 288, 289, 290 and 291 (part) which merged into Final Plot No. 70 could not be considered for the development permission as the owners of the said lands had not consented for the same and hence, sub-plot Nos.1 to 10, 12, 17, 18, 27, 28, 40 and 45 were not considered for granting the development permission. It is also the case of the petitioners that the petitioner No.1 and the respondent Nos. 4 and 5 mutually divided the said plot numbers for their occupation and development and accordingly, the petitioner No.1 applied for the development permission to the respondent No.3 – AUDA and such

permission was granted by the AUDA on 19th February, 2005 and after obtaining the necessary development permission, the petitioner No.1 started construction inter alia on the lands bearing Survey Nos. 204, 205 and 206 received from Sola Gram Panchayat. That the petitioner No.1 received Stay Order from the respondent No.2 i.e. Mamlatdar, Taluka Daskroi, District Ahmedabad, dated 15th April, 2005 stating that according to the panchnama made by the Talati-cum-Mantri of Sola Gram Panchayat, the petitioner No.1 and its developer Siddhi Corporation had put up unauthorized construction and therefore, they should immediately stop that construction and they were informed that if the Stay Order is violated, criminal action will be taken against the concerned persons. It is the case of the petitioners that they have immediately replied to the said Stay Order by communication dated 2nd May, 2005, however, nothing further was done and therefore, the petitioners have preferred the present Special Civil Application for the aforesaid reliefs.

3.It is the contention on behalf of the petitioners that the petitioners and the respondent Nos.4 and 5 have been allotted 50% of the lands held by them originally by way of Final Plot No. 70 and they have been asked to pay various charges in respect of the said development i.e. an amount of Rs. 33,49,628/- is paid for processing the application for development (betterment charges) and an amount of Rs. 1,05,928/- has been paid by the petitioner No.1 to the respondent No.3 – AUDA in respect of FSI and also various other charges have been paid as mentioned in para-12 of the petition. It is also submitted on behalf of the petitioners that they have been put into possession of the aforesaid Survey Nos. 204, 205 and 206 by Sola Gram Panchayat as the said Survey Numbers stood vested in the petitioner No.1, respondent Nos.4 and 5 and the respondent No.3 – AUDA is implementing the TP Scheme pending the approval of the State Government under Section 48 of the Act by mutual consent on the presumption that the Scheme shall be approved

and the lands proposed to be allotted in lieu of the original Plot shall vest in the allottee as if the provisions of Section 67(b) of the Act has come into force and the lands vest in the allottee and the development permission is granted and the Stay Order granted by the respondent No.2 is absolutely illegal. It is submitted that the Stay Order granted on the ground that the land bearing Survey Nos. 204, 205 and 206 of village Sola are Gauchar land. However, in view of the allotment of Final Plot No. 70 the status of the Gauchar land would not be continued as the said land is included in the Draft TP Scheme and it looses its character as such and therefore also, it is submitted that the petitioner No.1 is entitled to carry on construction on the said lands. It is also further submitted that initially when government land was taken over in the Draft TP Scheme and in lieu thereof other portion of the land which was allotted in the Draft TP Scheme, a representation was made by the Collector that a substantial portion of the land to be allotted under the Draft

TP Scheme should abut on the main road and in lieu of this representation, the AUDA made some changes in the Draft TP Scheme and allotted a portion of land of Final Plot No. 7 allotted to the petitioner No.1 to the State Government and inspite of such cooperation by the petitioners and the respondent Nos.4 and 5, the respondent No.2 has in utter disregard to the practice adopted by the AUDA held that the land bearing Survey No. 204, 205 and 206 of village Sola are Gauchar land and that the petitioner No.1 has put up unauthorized construction on the said land and thereby issued the Stay Order, which is absolutely illegal and contrary to the practice adopted by the AUDA and therefore, it is requested to allow the present Special Civil Application and to grant the reliefs as prayed for.

4. The present Special Civil Application is opposed by the State Government and an affidavit-in-reply is also filed by the Collector, Ahmedabad. It is submitted that the present petition is nothing but

an attempt to regularize the unauthorized occupation of the government land which at no point of time was granted in favour of the petitioners by any competent authority. It is further submitted that at the time when the Draft TP Scheme is prepared by the AUDA, the land belonging to the government and private land was given Final Plot No. 70 admeasuring 75,455 sq. mts. of land and actually the land belonging to the State Government admeasuring 56,529 sq. mts. of land out of the land admeasuring 1,50,910 sq. mts against which in the Final Plot No.70, land admeasuring 75,455 sq. mts. was sought to be allotted to the State Government as government land. It is further submitted that the respondent No.3 – AUDA has not taken into consideration the objections raised by the Office of the District Collector, Ahmedabad, and without considering the objections, the AUDA earmarked the Final Plot No. 70 and the same was sought to be allotted to the State Government against its original holding of various Survey Numbers admeasuring 56,529 sq. mts. It is also further

submitted that the land belonging to the State Government in its original Survey Numbers were adjoining and/or situated adjacent to the Sarkhej – Gandhinagar Highway, more precisely, the same is situated opposite the High Court premises and the same was very valuable land. It is further submitted that the AUDA in utter disregard to the objections raised by the Office of the District Collector, Ahmedabad, has proposed to allot the same to the third party, i.e. the petitioners herein, and allotted the said land to the petitioners for carried out constructions over the said land. It is also further submitted that the land bearing Survey Nos. 204 paiki, 205 paiki, 206 paiki, 207 paiki, 273 paiki, 275 paiki and 276 paiki admeasuring 56,529 sq. mts. belongs to the State Government, when the Draft TP Scheme was prepared by the AUDA, the aforesaid lands were forming part of Final Plot No. 70. The AUDA sent TP Scheme No. 28 to the State Government under the provisions of Section 48(1) of the Act on 17.7.2000. The AUDA communicated to the Government

by letter dated 20.8.2002 to give the possession of the aforesaid Survey Numbers. The Sola Gram Panchayat passed resolution No. 4 of 2003 dated 4th February, 2003 resolving to hand over the possession of the land (Gauchar land Bunyadi Sala, etc.) bearing Survey Nos.199 paiki, 204 paiki, 205 paiki, 206 paiki, 275 paiki, 276 paiki and 286 paiki in favour of the respondent Nos.4 and 5. It is also further submitted that the Collector, Ahmedabad, lodged his objections against the implementation of the TP Scheme on 9/12th June, 2003. The Collector, Ahmedabad, by letter dated 9/12th June, 2003 requested the government for implementation of the TP Scheme only after considering the objections raised by him. It is also further submitted that the AUDA wrote a letter to the Collector, Ahmedabad, dated 5th February, 2004 informing that the AUDA will retain 9900 sq. mts. of land in the frontage of Final Plot No. 70 and will allot the land bearing Survey Nos.279, 280 and 281 i.e. Final Plot No. 70/2 to the private owners. The Collector wrote to the AUDA that since

the issues raised by them vide letter dated 9/12th June, 2003 are not fulfilled the said proposal is not capable of being accepted. In the meantime, the development permission was given by the AUDA to the petitioners to develop the land bearing Survey Nos. 279, 280 and 281 in Final Plot No. 70. It is also further submitted in the affidavit-in-reply that by letter dated 15th April, 2005, the Mamlatdar, Daskroi, District Ahmedabad, passed an order restraining the petitioners from making further construction and despite the aforesaid order, the petitioners continued with the illegal construction on the land of the government, the possession of which was with the State Government as the Draft TP Scheme is not yet sanctioned. It is also further submitted in the reply that the Collector by letter dated 13th May, 2005 informed the AUDA that since the Collector has not given the possession of the land in question, the AUDA may not give development permission in respect of the said land and in the meantime, on 18th May, 2005 the Talati-cum-Mantri authorized by the Mamlatdar filed FIR with Sola

Police Station for the offences punishable under Sections 188 and 114 of the I.P.C. It is also further submitted in the reply that by order dated 2nd June, 2005 the State Government in exercise of its powers under Section 108 of the Gujarat Panchayat Act; 1993 resumed the Gauchar, Bunyadi Sala, etc. land situated in Survey Nos.199 Paiki and other lands for which the Sola Gram Panchayat passed a resolution dated 4th February, 2003. It is also further submitted in the reply that the resolution passed by the Sola Gram Panchayat in favour of the petitioner – society giving land and other issues came to be cancelled on 1st August, 2005 by the TDO in exercise of powers under Section 249 of the Act. It is also further submitted in the reply that even after filing of the FIR, the petitioner – Society continued with the construction on the land till 10th June, 2005 and the said fact was brought to the notice of the Assistant Commissioner of Police, pursuant to which, necessary steps were taken by the concerned Police Inspector. It is submitted on behalf of the

Collector, Ahmedabad, that as the land bearing Survey Nos. 204 paiki, 205 paiki and 206 paiki which is proposed to be allotted under the Draft TP Scheme as part of Final Plot No. 70 is a Gauchar land and therefore, the same could not have been allotted to the petitioners and the respondent Nos.4 and 5 and unless and until the TP Scheme has become final, the petitioners and the respondent Nos.4 and 5 could not have started the construction as it cannot be said that they have become the absolute owners of Final Plot No. 70, more particularly, when the said government land could not have been allotted to the petitioners and the respondent Nos. 4 and 5 and therefore, the Mamlatdar, Daskroi, has rightly issued the stay order to avoid any further multiplicity of proceedings and to stop the illegal construction, which is just and proper and therefore, it is requested to dismiss the present Special Civil Application.

5.Shri R.M.Chhaya, learned advocate appearing on

behalf of the AUDA, has submitted that under the Draft TP Scheme in lieu of revenue Survey Nos. 282/3 and other lands, Final Plot No. 70 is proposed to be allotted and the said Scheme is sent to the State government for its sanction under Section 48(1) of the Act. It is submitted that as per the practice adopted by the AUDA and pending the finalization of the said Scheme and in anticipation of finalization of the said Scheme, conditional development permission has been granted in favour of the petitioners and the respondent Nos. 4 and 5 with respect to certain plots subject to obtaining necessary NOC from the owners of the original Survey Numbers and on production of the NOC, the petitioners and the respondent Nos. 4 and 5 were required to put up the construction. He has further submitted that so far as certain portion of the land i.e. land bearing Survey Nos.204 paiki, 205 paiki, 206 paiki and other lands are concerned, there is a dispute with regard to whether it is a Gauchar land or not and even considering the objections raised by the State Government, the

proposed Draft TP Scheme was modified and the petitioners and the respondent Nos.4 and 5 came to be allotted Final Plot No. 70/2 admeasuring 9900 sq. mts. of land against some parcels of the land originally forming Final Plot No. 70 abutting Sarkhej – Gandhinagar Highway.

6. Heard the learned advocates appearing on behalf of the parties.

7. At the outset it is required to be noted that at present the TP Scheme No. 28 (Ghatlodia-Sola-Chandlodia) is at the stage of Draft TP Scheme, which is pending with the State Government for its sanction under Section 48(1) of the Act and under the proposed Draft TP Scheme in lieu of various Survey Numbers belonging to various persons i.e. Survey Nos. 288/3 and other Survey Numbers of Sola and Ghatlodia, OP No. 76 and other admeasuring 1,50,910 sq. mts. of land it is proposed to be allotted Final Plot No. 70 admeasuring 75,455 sq. mts. and the said proposed Final Plot No. 70 is

consisting of various Survey Numbers i.e. Survey Nos. 199 (part), 200, 203, 276, 277/1+2, 278/1, 277/3, 278/2, 204 (part), 205 (part), 206 (part), 207 (part), etc. It appears that pending the Draft TP Scheme to be sanctioned by the State Government and in anticipation of sanctioning the said Draft TP Scheme by the State Government, the AUDA granted the development permission in favour of the petitioners and the respondent Nos. 4 and 5 with respect to the proposed Final Plot No. 70 on certain conditions. It appears and it is the contention on behalf of the petitioners and the AUDA that the said development permission was granted as per the practice adopted by the AUDA pending sanctioning of the Draft TP Scheme/TP Scheme on condition that before putting up the construction and/or the said permission was subject to obtaining necessary NOC of the owners of the original Survey Numbers, which will be now forming part of proposed Final Plot No.70. At the outset it is also required to be noted that as per the provisions of the TP Scheme, unless and until the

Final TP Scheme is sanctioned, it cannot be said that the person in whose favour the land is allotted becomes the absolute owner and therefore, as such, pending even Draft TP Scheme before the State Government and before it is even sanctioned normally the AUDA ought not to have and/or should not have granted the development permission in anticipation of sanctioning of the Draft TP Scheme.

At this stage, certain provisions of the Gujarat Town Planning Act are required to be referred to and considered to consider *whether is it advisable and/or proper normally to grant development permission pending the finalization of the TP Scheme, which is at the stage of Draft Scheme pending for its sanction before the State Government*. As per Section 41 of the Act, the appropriate authority in consultation with the Chief Town Planner is required to declare its intention to make a TP Scheme in respect of the area in question. As per Section 42 of the Act, the appropriate authority is required to make a Draft Scheme of the area in respect of which the said

declaration has been made within 9 months from the date of declaration of intention to make a Scheme under Section 41 of the Act and it is required to publish the same in the Official Gazette along with the draft regulations for carrying out the provisions of the Scheme. As provided under Section 44 of the Act, the Draft Scheme shall contain (a) the area, ownership and tenure of each original plot, (b) the particulars of land allotted or reserved under clause (e) of sub-section (3) of section 40 with a general indication of the uses to which such land is to be put and the terms and conditions subject to which such land is to be put to such uses, (c) the extent to which it is proposed to alter the boundaries of original plots, (d) an estimate of the net cost of the scheme to be borne by the appropriate authority, (e) a full description of all the details of the scheme under sub-section (3) of section 40 as may be applicable, (f) the laying out or relaying out of land either vacant or already built upon, (g) the filling up or reclamation of low-laying, swampy or unhealthy area

or levelling up land, and (h) any other prescribed particulars. As provided under Section 45 of the Act, the Draft Scheme may contain proposals (a) to form a final plot by the re-constitution of an original plot by the alteration of its boundaries, if necessary, (b) to form a final plot from an original plot by the transfer of any adjoining lands, (c) to provide with the consent of the owners that two or more original plots which are owned by several persons or owned by persons jointly be held in ownership in common as a final plot, with or without alteration of boundaries, (d) to allot a final plot to any owner dispossessed of land in furtherance of the scheme, and (e) to transfer the ownership of a plot from one person to another. Where there is a disputed claim to the ownership of any place of land included in an area in respect of which a declaration of intention to make a scheme has been made, an inquiry may be held as provided under Section 46 of the Act by the appropriate authority or the Town Planning Officer at any point of time prior to the date on which the

Town Planning Officer draws up the preliminary scheme under Section 51 by such officer as the State Government may appoint for the purpose of deciding as to who shall be deemed to be the owner for the purpose of the Town Planning Act. As per Section 47 of the Act, any person affected by such Draft Scheme may submit objections relating to such scheme within one month from the date of publication of the Draft Scheme to the appropriate authority and the appropriate authority is required to consider such objections at any time before submitting the Draft Scheme to the State Government and modify such scheme. As per Section 48 of the Act, the appropriate authority is required to submit within three months from the date of publication of the Draft Scheme, with any modifications that may have been made therein under Section 47 together with the objections which may have been communicated to it to the State Government for sanction. The State Government may sanction the said Draft Scheme with or without modifications as provided in sub-section (2) of

Section 48 of the Act. As provided under Section 50 of the Act, the State Government is required to appoint the Town Planning Officer within one month from the date of which the date on which the sanction of the State Government to a Draft Scheme is notified in the Official Gazette. As per Section 51 of the Act, within a period of twelve months from the date of his appointment, the Town Planning Officer shall, after following the prescribed procedure, subdivide the Town Planning Scheme into a preliminary scheme and a final scheme. As per Section 52 of the Act, in a preliminary scheme, the Town Planning Officer shall (i) after giving notice in the prescribed manner and in the prescribed form to the persons affected by the scheme, define and demarcate the area allotted to, or reserved for, any public purpose, or for a purpose of the appropriate authority and the final plots, (ii) after giving notice as aforesaid, determine in a case in which a final plot is to be allotted to persons in ownership in common, the shares of such persons, (iii) provide for the total or partial

transfer of any right in an original plot to a final plot or provide for the transfer of any right in an original plot in accordance with provisions of Section 81, and (iv) determine the period within which the works provided in the scheme shall be completed by the appropriate authority. As per sub-section (2) of Section 52 of the Act, the Town Planning Officer is required to submit the preliminary scheme so prepared to the State Government for sanction and shall thereafter prepare and submit to the State Government the final scheme in accordance with the provisions of sub-section (3). As per Section 65 of the Act, on receipt of the preliminary scheme, the State Government may sanction the preliminary scheme by notification within a period of two months from the date of receipt or refuse to give sanction, provided that in sanctioning any such scheme, the State Government may make such modifications as may, in its opinion, be necessary for the purpose of correcting an error, irregularity or informality and only on sanctioning the preliminary scheme and

thereafter the final scheme shall have effect as if it were enacted in the Act. As per Section 66 of the Act, if at any time before the preliminary scheme is forwarded by the Town Planning Officer to the State Government, a representation is made to the Town Planning Officer by the appropriate authority and a majority of the owners in the area, that the scheme should be withdrawn, the Town Planning Officer is required to forward such representation after inviting from all persons interested in the scheme objections to such representation, together with the objections, if any, to the State Government and it is open for the State Government to withdraw the preliminary scheme as provided in sub-section (2) of Section 66 of the Act. As provided under Section 67 of the Act, on the day on which the preliminary scheme comes into force, all rights in the original plots which have been re-constituted into final plots shall determine and the final plots shall become subject to the rights settled by the Town Planning Officer. Thus, considering the aforesaid provisions of the

Gujarat Town Planning Act only on preliminary scheme coming into force, the rights in the re-constituted final plots are determined and the land owner who is allotted final plot on re-constitution becomes the absolute owner only on preliminary scheme coming into force. Therefore, unless and until, the preliminary scheme comes into force normally it is not advisable and/or proper even to grant the development permission at the stage of Draft Scheme pending before the State Government and/or preliminary scheme pending before the State Government for its sanction, in anticipation of its sanction with respect to the proposed final plots to the proposed owners who might become the owners on re-constitution of the final plots under the finalized TP Scheme. It might be that on receiving the objections at the Draft Scheme, the Town Planning Officer may modify the Draft Scheme and/or the State Government may sanction the Draft Scheme with modification, considering the objections and/or even at the stage of proposed preliminary scheme, the Town Planning Officer may modify the

scheme and the State Government may sanction the preliminary scheme with modification on receipt of the objections and it might be that the land owner may not get the proposed final plot, which was proposed at the stage of Draft Scheme and/or preliminary scheme. Therefore, normally, it is advisable and proper to wait till the preliminary scheme comes into force and it is sanctioned and finalized, so that the difficulty, which has arisen in the present Special Civil Application may not arise. If the AUDA would have waited till the scheme is sanctioned and finalized and would not have granted the development permission pending the Draft Scheme, the difficulty, which has arisen in the present Special Civil Application would have been avoided. Be that as it may, it is required to be noted that even the said development permission is subject to certain conditions, more particularly, obtaining necessary NOC from the owners of the original Survey Numbers forming part of the proposed Final Plot No.70. The proposed Final Plot No. 70 is consisting of Survey Nos. 204

paiki, 205 paiki and 206 paiki also which was held by Sola Gram Panchayat and which was a Gauchar land. The Collector, Ahmedabad, has right from the very beginning objected to allot the aforesaid Survey Numbers and other Survey Numbers belonging to the State Government as part of Final Plot No. 70. The petitioners are relying upon the resolution passed by the Sola Gram Panchayat dated 4th February, 2003 being Resolution No. 4 of 2003 resolving to hand over the possession of the land (Gauchar land) i.e. Survey Nos. 204 paiki, 205 paiki and 206 paiki, however, the State Government has already resumed the said Gauchar land and Bunyadi sala land in exercise of powers under Section 108(4) of the Gujarat Panchayat Act and not only that but the resolution passed by the Sola Gram Panchayat dated 4th February, 2003 being Resolution No. 4 of 2003 by which it was resolved to hand over the possession of the aforesaid lands (Gauchar and Bunyadi Sala lands) is also cancelled by the TDO on 1st August, 2005 in exercise of powers under Section 249 of the Act and therefore, there

is neither any resolution in existence nor the consent of the owners of the Survey Nos. 204 paiki, 205 paiki and 206 paiki is in existence and in view of the above objections raised by the Collector, Ahmedabad, and pending the said objections before the State Government even against the proposed Draft TP Scheme and objections by the State Government to include the aforesaid Survey Numbers i.e. Gauchar and Bunyadi sala land, etc. in to proposed Final Plot No. 70 and pending the Draft TP Scheme before the State Government for its sanction, considering the provisions of the TP Act, the petitioners and the respondent Nos. 4 and 5 cannot be permitted to put up any constitution on the disputed land, unless and until, the Draft TP Scheme has become final and any construction till then would be illegal. Even in view of the above position and conditional development permission, the petitioners and the respondent Nos. 4 and 5 cannot put up any construction. It appears that the AUDA for some reasons and in an undue haste granted the development permission even pending the

objections by the State Government and the Collector, Ahmedabad, to the Draft TP Scheme and the dispute with regard to the lands in question, which is not proper. Now considering the above position and the dispute and over and above that when the Draft TP Scheme is also not sanctioned by the State Government and that even Final Plot No. 70 is at present at proposal stage, it cannot be said that the petitioners have become the absolute owners of Final Plot No. 70 and/or that proposed Final Plot No. 70 absolutely vests in the petitioners, considering the provisions of the TP Act. Considering the provisions of the TP Act, there is no valid title at present in favour of the petitioners so far as proposed Final Plot No. 70 is concerned. There might be a practice of the AUDA to grant the development permission pending the Draft TP Scheme and/or preliminary Scheme before the State Government and to allow the proposed allottee to put up the construction, however, the said practice is not a healthy practice and/or the same is not in accordance with law, unless there is any

urgency. Unless and until the TP Scheme has become final, the proposed allottee does not become the absolute owner and the land vests in the said owners/allottees only on finalization of the TP Scheme. At the stage of proceedings prior to Section 67 of the Act, normally, no permission may be granted and/or no proceedings under Section 67 of the Act can be initiated in anticipation of the Draft TP Scheme, more particularly, so far as the present case is concerned there are serious disputes with regard to the government land which is proposed to be allotted to the petitioners and/or the respondent Nos. 4 and 5 by way of proposed Final Plot No. 70 and therefore, the respondent No.2 has rightly issued the Stay Order restraining the petitioners and/or the respondent Nos. 4 and 5 from putting up any further construction and in fact, the same would be to avoid any further multiplicity of proceedings and further complications. Suppose the petitioners are permitted to put up the construction and if ultimately the Draft TP Scheme is not sanctioned

and the disputed Survey Numbers are not allotted to the petitioners as part of final Plot No. 70, then, the petitioners would be required to demolish the construction and/or the construction put up by the petitioners would have to be declared as illegal. To avoid the aforesaid eventuality, pending the Scheme before the State Government, if the petitioners are restrained from putting up the constructions and even by holding that the petitioners cannot be permitted to put up the construction in Gauchar land/government land and if Stay Order is granted, it cannot be said that there is any illegality committed by the respondent No.2, which requires interference of this Court in exercise of powers under Article 226 of the Constitution of India. As stated hereinabove, in fact, the respondent No.2 is justified in issuing the Stay Order. It is required to be noted that even as stated above inspite of the earlier Stay Order, the petitioners continued to put up the construction illegally, for which, the criminal complaints were required to be filed.

8.For the reasons stated above and more particularly in view of the fact that the Draft TP Scheme by which Final Plot No. 70 is proposed to be allotted is yet not sanctioned and is pending before the State Government and as the Collector, Ahmedabad, had submitted its objections against the Final Plot No. 70, the petitioners cannot be permitted to put up the construction and therefore, there is no substance in the present Special Civil Application and the same is required to be dismissed and is accordingly dismissed. Notice is discharged. However, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.